IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 3511 of 2005()

CRA.195/2005 of V ADDL.SESSIONS COURT, ERNAKULAM
CC.127/2001 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/2ND ACCUSED

A.M.SADHIQ PROPRIETOR, STAR TRADING
CO, XL/4216, STAR COTTAGE, ST.ALBERTS SCHOOL ROAD,
COCHIN-35.

BY ADV. SMT.M.K.PUSHPALATHA

RESPONDENTS: RESPONDENTS/RESPONDENTS/COMPLAINANT

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1. JAGADISH TRADING CO., WHOLE SALE GRAIN &
EDIBLE OIL MERCHANTS & COMMISSION AGENTS,
39/1532, 2ND FLOOR SHIV ASHARAM, S.P MUKUARJI,
MARG, DELHI REP. BY ITS POWER HOLDER,
DILIPKUMAR AGARWAL, S/O.JAGADISH AGARWAL,
RESIDING AT 12/1334, PANAYAPPILLY, KOCHI.

2. STATE OF KERALA REP. BY PUBLIC
PROSEUCUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. C.M. NAZAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.A.NO. 23176/2005 IN CRL. R.P. NO. 3511/2005

DISMISSED

26.11.2007 SD/- V. RAMKUMAR, JUDGE.

/True Copy/

P.A to Judge.

V. RAMKUMAR , J

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CRL.R.P. NO. 3511 OF 2005 D

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Dated this the 26th day of November, 2007.

ORDER

The revision petitioner is the 2nd accused in C.C. No. 127/2001 on the file of Judicial First Class Magistrate-II, Kochi in a prosecution under Section 138 of the Negotiable Instruments Act. In the private complaint filed by the 1st respondent herein, there were three accused. A1 is Star Trading Company which is a proprietary concern of which A.M. Sadhiq is the proprietor. A3 is Star Mercantile Enterprise Pvt. Ltd., which is a private limited company of which A.M. Sadhiq is the Managing Director. The person shown A2 in the private complaint is A.M. Sadhiq who is described both as the proprietor of A1 proprietary concern and the Managing Director of A3 company. Going by the averments in the complaint it was A2 in his capacity as the Managing Director of A3 company who issued the cheque in question on bahalf of A3 company for a sum of Rs.50,000/-. But the cause title of the trial court judgment only shows the 1st accused-proprietary concern and the 2nd accused A.M. Sadhiq described only as the proprietor of Star Trading Company. The cause title of the trial court judgment is evidently wrong since in the private complaint which forms the subject matter of C.C. No. 127/2001, there are three persons as mentioned earlier.

2. Going by the averments in the complaint, the courts below should have recorded a finding that A3 company committed the offence and in that case alone could the courts below convict A2, the Managing Director of A3 company for the offence. Even though in a prosecution of this nature, the company need not be prosecuted along with the Managing Director and that a prosecution against the Managing Director alone, without the junction of the company, is perfectly sustainable, for recording a conviction under Section 138 of the Negotiable Instruments Act, a finding that the company committed the offence is inevitable in view of Section 141 of the Negotiable Instruments Act. Both the courts below have overlooked this vital aspect while convicting A2 who is also wrongly described as the proprietor of Star Trading Company whereas going by the averments in the complaint, it was in his capacity as the Managing Director of A3 company that he issued the cheque in question. Without recording a finding to the effect that A3 company committed the offence punishable under Section 138 of the Negotiable Instruments Act, the Managing Director of that company namely the 2nd accused could not have been convicted of the said offence. The judgment under revision are accordingly set aside and the matter is remitted to the trial court

for fresh disposal of C.C. No. 127/2001 in accordance with law. That court shall also submit an explanation from the member of the staff concerned for wrongly preparing the cause title of the judgment which does not reflect the true position in the private complaint filed by the 1st respondent herein. The said explanation shall be forwarded within one month of the date of receipt of a copy of this judgment along with the remarks of the preceding officer. The parties shall appear before the trial court on **27.12.2007** without any further notice.

3. It is submitted on behalf of the revision petitioner that he has suffered a major set back in life and he may find it difficult to appear before the trial court in person during the remanded trial. The petitioner may file a petition under Section 317 Cr.P.C and I am sure that the Magistrate will take into account the medical grounds put forward by the petitioner. However, his presence shall inevitably be enforced at the time of pronouncing judgment.

The Crl.R.P is disposed of accordingly.

V. RAMKUMAR, JUDGE.

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